

**REMARKS**

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application.

**Disposition of Claims**

Claims 1-4 are pending in this application. Of these, claim 1 is independent, and the remaining claims depend, directly or indirectly, upon claim 1.

**Rejection(s) under 35 U.S.C. § 103**

Claims 1-4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Japanese Patent Application Publication No. 54-11751 (“Shibata”) in view of Japanese Patent Application Publication No. 4-40931 (“Masataka”) in view of Japanese Utility Laid Open Application No. H6-0068663 (“Kito”) in further view of Japanese Patent Application Publication No. 2003180597 (“Toga”). As previously noted, from the context of the Office Action, the above prior art reference which the Examiner relies on for the rejection should be Japanese Patent Application Publication No. 52-151683 (“Shibata”). This rejection is respectfully traversed for the reasons set forth below.

As previously noted, referring to the figures and specification as an example, one or more embodiments of the claimed invention have a unique structural feature at an upstream end (21a) of the washing water distribution pipe (21) associated with a first connecting pipe (31) and a washing water supply pump (19), which is installed in a washing water tank (17). More specifically, the washing water supply pump (19) is installed in a front surface of the washing water tank (19) so that an inlet and an outlet of the washing water supply pump (19) are positioned within the washing

water tank (17). An upstream end (21a) of the washing water distribution pipe (21) is removably inserted into a first connecting pipe (31) connected to an outlet side of a washing water supply pump (19) in a washing water tank (17) in the bottom of the washing chamber (3), such that the first connecting pipe (31) extends toward the opposite side of the front surface of the washing water tank (17) (*see e.g.*, Figs. 3 and 5, and paragraphs [0026] and [0033] of the original specification). Due to this specific configuration, the claimed invention is advantageously easier to install or replace than the conventional art.

Accordingly, independent claim 1, includes, in part, “an upstream end of the washing water distribution pipe is removably attached to a first connecting pipe connected to an outlet side of a washing water supply pump in a washing water tank in the bottom of the washing chamber such that the first connecting pipe extends toward the opposite side of the front surface of the washing water tank,” and “*the washing water supply pump is installed in a front surface of the washing water tank so that an inlet and an outlet of the washing water supply pump are positioned within the washing water tank.*”

The claimed features set forth above primarily relate to (1) the positional relationship between the washing water tank and the washing water supply pump arranged within the washing water tank, and (2) the configuration of the inlet and outlet of the washing water supply pump arranged within the washing water tank. Further, the specific positional relationship and configuration recited in the claim, when considered as a whole, define an easily removable connection between the washing water distribution pipe and the outlet of the washing supply pump, and an easily removable connection between the rinsing distribution pipe and the outlet of the

rinsing water supply pump. As a result, the claimed invention advantageously provides a construction that can be easily assembled into, and removed from, the main body of the dishwasher.

In contrast, as the Examiner acknowledges, none of Shibata, Masataka, Kito, and Toga, shows or suggests, at least, the feature, “the washing water supply pump is installed in a front surface of the washing water tank so that an inlet and an outlet of the washing water supply pump are positioned within the washing water tank,” as required by the claim. However, the Examiner asserts that “this is mere rearrangement of parts that would have been an obvious design choice to one of ordinary skill in the art at the time of invention.” Applicant respectfully disagrees.

MPEP § 706.02(j) provides: “to support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” Further, in *KSR Int ’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007), the Supreme Court noted that the analysis supporting a rejection under 35 U.S.C. § 103 should be made explicit. Additionally, MPEP § 2141.02 states: “[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983).

However, the Examiner cites *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) and *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975), for the general proposition that rearranging of parts of an invention involves only routine skill in the art (*see* page 5 of the instant Office

Action). Applicant respectfully notes the Examiner has incorrectly applied the rule allegedly set forth by *In re Japikse* to the present claims. *In re Japikse* held that shifting a part to a different position was not inventive because “the operation of the device would not thereby be modified.” *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). Likewise, *In re Kuhle* held that the “use of such means of electrical connection in lieu of those used in the references *solves no stated problem* and would be an obvious matter of design choice within the skill in the art.”(emphasis added).

*In re Japikse* and *In re Kuhle* do not create a general rule that rearrangement of parts is obvious and, in fact, the cases are clearly not applicable when the rearrangement *modifies the operation of the device*. It is well established that there must be *functional identity* between the claimed and prior art structures for a mere rearrangement of parts to apply. “*Japikse* is limited to the particular facts of the case, *i.e.*, the position of the starting switch is immaterial and, therefore, obvious, since the overall operation of the device would not be affected by such change.” *Ex Parte Stuardo A. Robles, Thanh Pham and Bang C. Ngyuen*, 1997 WL 1883840, \*2 (Bd. Pat. App. & Inter. 1997) (NO. APPEAL 1997-0350). Thus, the Examiner’s reliance on *In re Japikse* and *In re Kuhle* as a per se rule for asserting that rearrangement of parts are obvious is improper.

Furthermore, in the unpublished opinion, *Ex Parte Boris*, 2003 WL 23014547 (Bd.Pat.App. & Interf.), the Board of Patent Appeals and Interferences directly addressed the situation involved here:

Rejections based on 35 U.S.C. § 103(a) must rest on a factual basis. *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967). In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *Id.*

In the present case, the examiner fails to advance any factual basis to supply the admitted deficiencies of Scarpa vis-a-vis the subject matter recited in independent claims 1, 16, 24, 35 and 36. Instead, the examiner attempts to bridge Scarpa's evidentiary gaps by resort to so-called mechanical or per se rules of obviousness allegedly established by the St. Regis and Japikse cases. *Such rules do not exist, however, and the reliance thereon by the examiner to establish obviousness under § 103(a) is improper.* See *In re Ochiai*, 71 F.3d 1565, 1570, 37 USPQ2d 1127, 1132 (Fed. Cir. 1995); *In re Wright*, 343 F.2d 761, 769-70, 145 USPQ 182, 190 (CCPA 1965).

Similarly, in the present case, the Examiner is employing a per se rule of obviousness in asserting that the specific configuration of the claimed invention is a mere rearrangement of parts, even though the Examiner admits that the location and function of the parts recited in the claims are not identical to those taught by the prior art. Reliance on such a per se rule is improper, especially where, as in the present case, the claimed configuration has an advantages over the prior art configuration.

As discussed above, the claimed features, when considered as a whole, achieve a construction that can be easily assembled into, and removed from, the main body of the dishwasher. The specific structure recited in the claims allows for the easier attachment and detachment of the pipe connections arranged within the water tank, which thereby significantly improve the ability to maintain the dishwasher.

In contrast to the claimed invention, there exists nothing whatsoever in the disclosures of Shibata, Masataka, Kito, and Toga that even recognizes, much less addresses, the issue of allowing easier attachment and detachment of the pipe connections arranged within the water tank of the dishwasher. Accordingly, when considering what the teachings of the cited references would reasonably convey to one skilled in the art, it is clear that, regardless of whether considered

separately or in combination, the structure of the claimed invention is not disclosed and the advantages of the claimed invention are not recognized or achievable.

Additionally, Applicant submits that it is not sufficient for the purposes of supporting a rejection of obviousness to merely rely on unassociated factors which might be related to the functionality of elements as claimed. As was made clear by the Supreme Court in *KSR Int 'l Co. v. Teleflex Inc.*, when considering obviousness of a combination of known elements, the operative question is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” (82 USPQ2d at 1396). Moreover, “common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not.” *LeapFrog Enterprises, Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007). Further, the key to supporting any rejection under § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious (*see* MPEP §§ 2141, 2142).

In the instant case, the Examiner sets forth no clear reasons why one skilled in the art would find it obvious to combine the various elements of the cited references in the manner proposed by the Examiner. Rather, it appears that the Examiner is merely attempting to recreate the claimed invention by finding unrelated component pieces of the claimed invention, which is wholly improper. *See In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992) (stating that “it is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious . . . . This court has previously stated that ‘one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.’”); *In re Wesslau*, 353 F.2d 238 (C.C.P.A. 1965) (stating that “it is impermissible within the framework of section 103 to pick and choose from any one reference

only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art”).

Thus, the claim cannot be rendered obvious by Shibata, Masataka, Kito, and Toga, whether considered separately or in combination, not only because the combination of the references fails to teach all of the limitations of the claims, but also, because one skilled in the art using common sense would not be motivated modify the teachings of those references as proposed by the Examiner in an attempt to achieve the claimed invention.

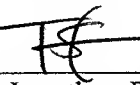
In view of the above, independent claim 1, as amended, is patentable over Shibata, Masataka, Kito, and Toga because, whether separately or in combination, the references fail to show or suggest all of the limitations of the claim. By virtue of their dependence, claims 2-4 are also patentable for at least the same reasons. Accordingly, withdrawal of the rejection is respectfully requested.

**Conclusion**

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 07200/082001).

Dated: May 28, 2010

Respectfully submitted,

By  #45,079  
Jonathan P. Osha THOMAS SCHUBERT  
Registration No.: 33,986  
OSHA · LIANG LLP  
909 Fannin Street, Suite 3500  
Houston, Texas 77010  
(713) 228-8600  
(713) 228-8778 (Fax)  
Attorney for Applicant